



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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07/010,225	02/03/87	FERNANDEZ	H 1,642

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EXAMINER	
WILTZ, J	
ART UNIT	PAPER NUMBER
183	8

DATE MAILED:

06/30/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

Andt A

5/5/89

Responsive to communication filed on 5/5/89

This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), no days from the date of this letter.

Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892. 2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449 4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474 6.

Part II SUMMARY OF ACTION

1. Claims 4-8, 10-21 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims 1-3 & 9 have been cancelled.

3. Claims _____ are allowed.

4. Claims 4-8 & 10-21 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. These drawings are acceptable; not acceptable (see explanation).

10. The proposed drawing correction and/or the proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved. disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Claims 4-8, 10, and 16-21 are rejected under 35 U.S.C. 103 as being unpatentable over Deckner and Puchalski et al. combined with Wilder, Radulescu et al. and Stone in view of Kludas et al., JA'17 and JA'10 and further in view of Bailey, Vinson and JA'42.

Applicant claims a skin moisturizer comprising less than about 2% water soluble collagen, an amount of water to produce approximately 8 ounces of liquid and spraying means for spraying the mixture directly onto the skin in a fine spray whereby the water in the mixture is bound to and moisturizes the skin. The moisturizer may also potentially contain DMDM Hydantoin, cucumber extract and panthenol. Puchalski et al. discloses a skin-treating preparation which comprises 0.1-10% soluble collagen, 0.1-3% panthenol and 0.1-1.5% dimethyldimethoyl hydantoin in deionized water. Deckner teaches conventional skin-treating agents such as hydrolyzed animal protein and panthenol in ranges from 0.01-5% each along with dmdm hydantoin. Wilder discloses a skin treating composition which may potentially contain collagen (see Example 13, column 11) and which may be sprayed on the skin (see column 5, line 45). Radulescu et al disclose a topical collagen spray. Stone reveals that it is desirable to apply many cosmetics in

the form of a fine spray, and further discloses a pump sprayer for same which is very similar to that disclosed as useful in the dispensation of applicant's invention. The secondary references, JA'17, JA'10 and Kludas et al. all recognize the beneficial effects of collagen in skin-treating compositions for the purpose of ameliorating skin roughness and reducing wrinkles. Kludas et al. specifically points out that as soluble collagen in the skin becomes cross-linked due to aging, it becomes insoluble, inelastic, rigid and loses its water absorptivity. The application of soluble collagen to the skin can act to compensate for the loss of endogenous soluble collagen. The tertiary references each teach the customary inclusion of cucumber juice in skin-treating and particularly acne-treating compositions. It would have been obvious to one of ordinary skill in the art to produce the claimed invention as the references show that collagen-containing skin-treating compositions such as claimed are well known in the art, that collagen has been shown to be applied to the skin as a spray and that the administration of cosmetics and skin-treating compositions via a fine spray apparatus such as disclosed by applicant is also well known. The qualification in the claims that the water in the mixture is bound to and moisturizes the skin is considered to be an inherent characteristic of the application of soluble collagen solutions to the skin as shown by Kludas et al., as discussed supra, in that soluble collagen is water-binding (i.e. absorptive). Claim language drawn to preparing 8 ounces of formula are further considered both functional and obvious as it is the proportion of claimed ingredients, not the volume, that endows the composition with its properties and utility.

Applicant's arguments filed May 5, 1989 have been fully considered inasmuch as they apply to the new grounds of rejection but they are not deemed to be persuasive.

Applicant's arguments as to the novelty and unobviousness of the claimed invention appear to stem from allegations of unexpected result. However, there is no showing of such on the record. Allegations of

"maximiz[ing] the moisturizing effect of the collagen" and "to a product that can be used anytime, anywhere" are simply not persuasive in absence of objective evidence. Further, applicant's opinions that the compositions of the prior art are "messy" and of limited use are considered to be subjective and not well taken as U.S. patents are presumed to be valid.

Claims 11-16 are rejected under 35 U.S.C. 103 as being unpatentable over Deckner and Puchalski et al. in view of Kludas et al., JA'17 and JA'10 and further in view of Wilder, Radulescu et al. and Stone for the reasons of record.

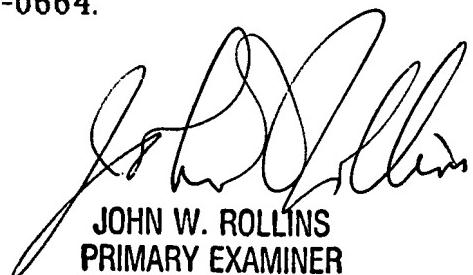
Applicant's arguments filed May 5, 1989 have been fully considered but they are not deemed to be persuasive.

As stated supra, applicant's arguments appear to be drawn to an allegation of unexpected result. However, no factual showing of same has been provided. The references of record clearly show that 1) collagen, along with other ingredients, in proportions claimed are well known to be applied to the skin for their beneficial skin-treating effects; and 2) skin-treating compositions and specifically those containing collagen are also well known to be applied to the skin via a spray. As the instant claims require no more, the invention of such a method of applying a collagen solution to the skin would have been obvious to one of ordinary skill in the art.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jean C. Witz whose telephone number is (703) 557-3433. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 557-0664.



JOHN W. ROLLINS
PRIMARY EXAMINER
ART UNIT 183